

WINHELLER

Attorneys at Law & Tax Advisors



Blockchain, Sustainable Development & Privacy

Public Blockchains with Nodes
in Third Countries



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WINHELLER Attorneys at Law and Tax Advisors

- ▶ Full service law firm and accounting firm, specialized in (amongst others):
 - ▶ Business Law, i.e. IT Law, IP law, Data Protection, Competition Law, Corporate Law, Employment Law, Real Estate Law, Compliance, Estate Planning
 - ▶ Financial service providers: esp. Banking Law, Supervisory Regulations and Tax Advice, Cryptocurrencies
 - ▶ National and International Tax Law, Tax Advice and Tax Accounting
 - ▶ Nonprofit organizations, esp. Nonprofit Law, Tax Advice and Tax Accounting
- ▶ 22 attorneys, 4 tax advisors, 14 tax assistants
- ▶ Internationally connected:



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I. Introduction

Types

- ▶ Public
- ▶ Permissioned
- ▶ Private

Actors

- ▶ Nodes
- ▶ Participants
- ▶ Miners



II. Node as foundation of a blockchain

Functions

- ▶ Checks if a block of transactions is valid and accepts or rejects it
- ▶ Storing and preserving blocks of the complete transaction history
- ▶ Interconnection of nodes – Transmitting transaction history to other nodes for synchronizing with the blockchain

Nodes as part of a permissionless blockchain

- ▶ Borderless – Node can be in every country of the world
- ▶ No access control – Node can enter and leave network at any time

III. When does a disclosure constitute a third country data transfer?

- ▶ **GDPR does not define the term „transfer“**
- ▶ **ECJ - Lindqvist and Google Spain - Internet publications**
 - ▶ No transfer – Data gets published on a website through a host provider that uses servers in the EU
 - Unworkable result – Uploading information on a website would be a data transfer to each country in the world (Lindqvist)
 - Controller must ensure compliance within the framework of its responsibilities, powers and capabilities (Google Spain)
 - ▶ Transfer – Data is part of a targeted transmission to a third country

IV. GDPR requirements

- ▶ **General GDPR conditions, e.g.**
 - ▶ Legal basis: Article 6 (1) (a) – (f) GDPR
 - ▶ Data processing agreement
- ▶ **Specific conditions for third country transfers**
 - ▶ Adequacy decision, e.g. Privacy Shield
 - ▶ Binding Corporate Rules (“BCR”)
 - ▶ Standard Contractual Clauses (“SCCs”)
 - ▶ Exemptions for specific situations

V. Data exchange between nodes result in third country transfers?

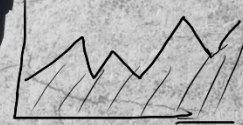
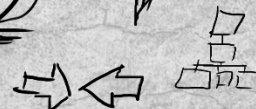
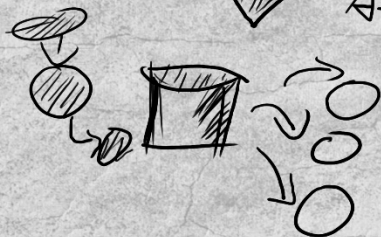
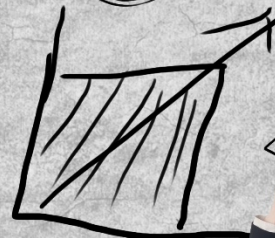
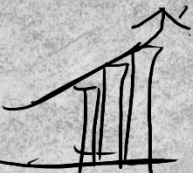
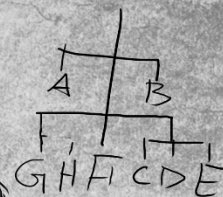
Similarities and differences to the ECJ decisions

- ▶ Unworkable result – therefore no transfer?
 - ▶ Where a node is situated is neither foreseeable nor can it be controlled
 - ▶ Exchanging information between the nodes would be a data transfer to each country in the world
 - ▶ Transaction data gets uploaded to all nodes instantly, no host provider in the EU acts as intermediary
- ▶ What consequences result from the principle privacy by design?
 - ▶ Does a controller/processor who uses blockchain application has the responsibility to use only permissioned blockchains?
 - ▶ Capable to control the participation of nodes with respect of the country where they are located

$$4 \times 12 + 45 = 93$$

$$x + y$$

$$\begin{array}{r} 1512 \\ 122 \\ 124 \\ 1133 \\ \hline = 1714 \end{array}$$



VI. Q&A

$$\begin{array}{r} 1323 \\ + 313 \\ \hline 1531 \end{array}$$

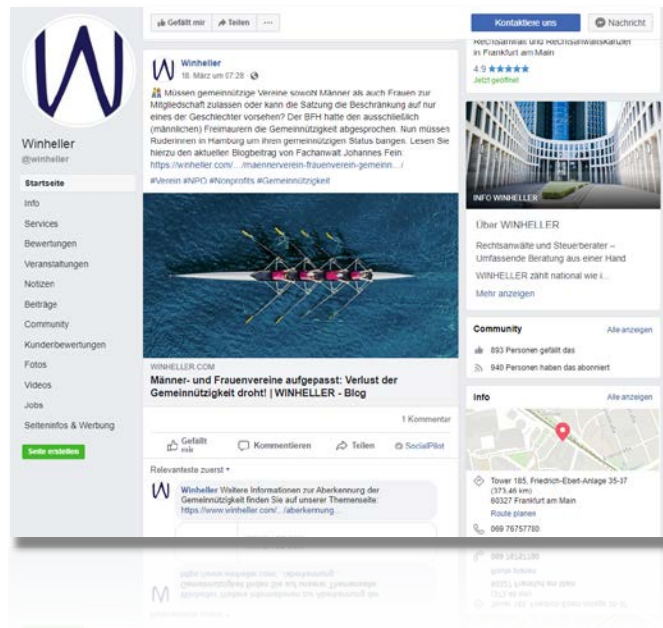
$$a - 1 =$$



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Thank you for your attention!



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